

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Balkan Energy Company

(b) County of Residence of First Listed Plaintiff Dallas

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Mitchell Madden, MaddenSewell, LLP, Four Hickory Center, 1755
Wittington Place, Suite 300, Dallas, Texas 75234 (972) 484-7780

DEFENDANTS

ProEnergy Services International, Inc., ProEnergy Services, LLC, Bill
Shinholser, Al Simon, Steve Cox, Jeffrey Cannon, J.D. Robinson,
John BryantCounty of Residence of First Listed Defendant Sedalia, MO

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

Attorneys (If Known)

Tim McCloskey, Carrigan McCloskey & Roberson, LLP, 945 Heights
Blvd., Houston, TX 77008 (713) 868-5581

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|---------------------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input checked="" type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN

(Place an "X" in One Box Only)

- ☐ 1 Original Proceeding
- ☒ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 USC 1441

Brief description of cause:

Breach of Services Contract

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) (See instructions)

PENDING OR CLOSED:

JUDGE Scott O. Wright W.D. MissouriDOCKET NUMBER 09-cv-04026DATE
02/17/2010SIGNATURE OF ATTORNEY OF RECORD
s/ Blake E. Rizzo

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

BALKAN ENERGY COMPANY

VS.

PROENERGY SERVICES
INTERNATIONAL, INC.,
PROENERGY SERVICES, LLC,
BILL SHINHOLSER, AL SIMON,
STEVE COX, JEFFREY CANNON,
J.D. ROBINSON and JOHN BRYANT

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CIVIL ACTION NO. _____

NOTICE OF REMOVAL

ProEnergy Services International, Inc. and ProEnergy Services, LLC file this Notice of Removal of a state court action styled *Balkan Energy Company v. ProEnergy Services International, Inc., ProEnergy Services, LLC, Bill Shinholser, Al Simon, Steve Cox, Jeffrey Cannon, J.D. Robinson and John Bryant*, Cause No. 09-01944 in the 95th Judicial District Court of Dallas County, Texas (the "State Court Action").

I. PROCEDURAL BACKGROUND

1. On February 18, 2009, ProEnergy Services, LLC filed suit against Balkan Energy Company in the United States District Court for the Western District of Missouri, bearing Case No. 2:09-cv-04026-SOW (the "Federal Court Action"). The dispute in the Federal Court Action arises out of an agreement for services that the parties entered into to provide start-up and commissioning services for an electrical power generation barge located in Ghana. ProEnergy sued Balkan for \$660,833.30 in unpaid invoices and other damages. A copy of the complaint in the Federal Court Action is attached hereto as **Exhibit 1**.

2. After the filing of the Complaint in the United States District Court for the Western District of Missouri, in a race to the court house, Balkan filed its original petition in the State Court Action against ProEnergy Services International, Inc. The original petition was not served on the original defendant.

3. On May 26, 2009, Balkan filed its original answer, affirmative defenses and counterclaim against ProEnergy in the Federal Court Action. Docket No. 10, Case No. 2:09-cv-04026-SOW. A copy of Docket No. 10 is attached hereto as **Exhibit 2**. The parties are actively engaged in discovery in the Federal Court Action. The allegations in Balkan's counterclaim include a breach of contract claim nearly identical to the claim asserted in Balkan's original petition in the State Court Action.

4. On January 8, 2010, Balkan filed its first amended petition in the State Court Action. For the first time, almost one year since the filing of the original petition, Balkan sued the individual defendants. Bill Shinholser was served with the first amended petition on January 28, 2010. ProEnergy Services International, Inc. was served with the first amended petition on February 3, 2010. Al Simon, Steve Cox, Jeffrey Cannon, and John Bryant received a copy of the first amended petition on February 5, 2010 via certified mail at the ProEnergy corporate office in Sedalia, Missouri. J.D. Robinson has not been served in the State Court Action. Thus, this Notice of Removal has been timely filed, as it is being filed within thirty days from service of the first amended petition on Mr. Shinholser.

II. DIVERSITY JURISDICTION

5. This Notice of Removal is filed pursuant to 28 U.S.C. § 1441.

6. This action is properly removed to this Court as the State Court Action is pending within this district and division.

7. Removal of this action is proper under 28 U.S.C. § 1332 based on the parties' diversity of citizenship and the amount in controversy, exclusive of interest and costs.

8. Balkan is a Texas Corporation with its principal place of business located in Dallas, Texas, Dallas County. Balkan's first amended petition at ¶ 1.01.

9. ProEnergy Services International, Inc. is a Missouri Corporation with its principal place of business in Sedalia, Missouri, Pettis County.

10. ProEnergy Services, LLC is a Missouri Limited Liability Company with its principal place of business in Sedalia, Missouri, Pettis County.

11. Al Simon, Steve Cox, Jeffrey Cannon and John Bryant are all citizens of Missouri.

12. Bill Shinholser is a citizen of Texas. However, Mr. Shinholser's citizenship should be disregarded for purposes of determining jurisdiction under 28 U.S.C. §§ 1332 and 1441(b) because he has been fraudulently or improperly joined to defeat diversity jurisdiction. There is no reasonable basis for this Court to predict that Balkan might be able to recover from Mr. Shinholser in state court. *Menendez v. Wal-Mart Stores, Inc.*, 2010 WL 445470, *5 (5th Cir. Feb. 1, 2010).

13. All of the individual defendants, save and except J.D. Robinson, are represented by undersigned counsel and all consent to the removal of the State Court Action to federal court.

14. The one remaining defendant, J.D. Robinson has not been served in the State Court Action. As Mr. Robinson has not been served, his consent to removal is not required. *Rawlings v. Travelers Prop. Cas. Ins. Co.*, 2008 WL 2115606 (N.D.Tex. May 20, 2008).

15. Accordingly, there is complete diversity among the parties.

16. Where there is complete diversity among the parties and where the amount in controversy exceeds \$75,000, an action may be removed to federal court. 28 U.S.C. § 1332. To determine the amount in controversy, the court may consider actual damages, exemplary damages

and attorney's fees. *White v. FCI U.S.A., Inc.*, 319 F.3d 672, 675 (5th Cir. 2003). Where a defendant can show, by a preponderance of the evidence, that the amount in controversy is greater than the jurisdictional amount, removal is proper. *Id.* (affirming district court's conclusion that it was "more probable than not" that damages were over \$75,000 where the total amount of relief was not stated in the petition); *St. Paul Reins. Co. v. Greenberg*, 134 F.3d 1250, 1253 n. 13 (5th Cir. 1998) ("[t]he test is whether it is more likely than not that the amount of the claim will exceed [the jurisdictional minimum].") In making a determination that the claims exceed the jurisdictional amount, the district court must first examine the complaint to determine whether it is "facially apparent". *Id.*

17. Here, Balkan does not pray for a specific dollar amount of damages in its first amended petition. However, in ¶ 5.17 subsections A, B, C, D, and I, Balkan alleges that ProEnergy is liable to Balkan for costs in excess of five million dollars (\$5,000,000). In addition, Balkan asks for exemplary damages, costs and attorneys' fees. Based on the alleged damages and the allegations set forth on the face of the first amended petition, it is facially apparent that the \$75,000 threshold will more than likely be met and this Court has jurisdiction over the matter. *See., e.g., White v. FCI U.S.A., Inc.*, 319 F.3d at 675.

18. In accordance with 28 U.S.C. § 1446(a) and Local Rule 81.1, copies of the pleadings in the State Court Action, the docket sheet, together with an index of all matters filed, are attached hereto as **Exhibits 3 - 19**. No other process, pleadings or orders have been filed with the state court as of the date of the filing of this notice of removal. A certificate of interested persons is attached as **Exhibit 20**.

19. In accordance with 28 U.S.C. § 1446(d), ProEnergy will promptly give notice to all necessary parties in writing and shall file a copy of the notice of removal with the clerk of the State Court.

Respectfully submitted,

CARRIGAN, McCLOSKEY & ROBERSON, L.L.P.

By: s/ Blake E. Rizzo

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**ATTORNEYS FOR PROENERGY
SERVICES INTERNATIONAL, INC.,
PROENERGY SERVICES, LLC, BILL
SHINHOLSER, AL SIMON, STEVE COX,
JEFFREY CANNON and JOHN BRYANT**

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the above and foregoing has this day been sent by United States mail, postage prepaid to:

Mitchell Madden
Thomas V. Murto III
MaddenSewell, LLP
Four Hickory Centre
1755 Wittington Place, Suite 300
Dallas, TX 75234

on this 17th day of February, 2010.

s/ Blake E. Rizzo

Blake E. Rizzo